REMARKS

In the final Office Action, the Examiner rejects claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. (U.S. Patent No. 5,732,359) in view of KURESHY et al. (U.S. Patent Publication No. 2002/0152268); rejects claims 2, 19, and 23 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD (U.S. Patent Publication No. 2003/0119568); rejects claims 4, 5, 10, and 15 under 35 U.S.C. § 103(a) as unpatentable BARANOWSKY, II et al. in view of KURESHY et al., and further in view of GRIFFITH et al. (U.S. Patent No. 6,898,427); rejects claims 17 and 18 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of GUNNARSSON et al. (U.S. Patent Publication No. 2003/0118015); rejects claim 24 under 35 U.S.C. § 103(a) as unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD and BRIDGELALL (U.S. Patent Publication No. 2002/0085516); and rejects claim 25 under 35 U.S.C. § 103(a) as unpatentable BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD and GRIFFITH et al. Applicants respectfully traverse these rejections.[1] Claims 1-30 remain pending.

[1] As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

Claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al. Applicants respectfully traverse this rejection.

The three basic criteria for establishing a *prima facie* case of obviousness are articulated in M.P.E.P. § 2142. First, there must be some suggestion or motivation, either in the reference(s) themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. Applicants respectfully submit that a *prima facie* case of obviousness has not been established with respect to claims 1, 3, 6-9, 11-14, 16, 20-22, and 26-30.

For example, independent claim 1 is directed to a device including a wireless transceiver; and logic to determine whether a first terrestrial network is available for transmitting data, transmit the data to the first terrestrial network using the wireless transceiver when the first terrestrial network is available, determine, when the first terrestrial network is unavailable, whether a second terrestrial network is available, the second terrestrial network being slower than the first terrestrial network, and transmit the data to the second terrestrial network using the wireless transceiver when the second terrestrial network is available. BARANOWSKY, II et al. and KURESHY et al. do not disclose or suggest this combination of features.

For example, BARANOWSKY, II et al. and KURESHY et al. do not disclose or suggest logic to determine, when the first terrestrial network is unavailable, whether a

second terrestrial network is available, the second terrestrial network being slower than the first terrestrial network. The Examiner appears to rely on BARANOWSKY, II et al. for allegedly disclosing logic to determine, when a first network is unavailable, whether a second network is available (final Office Action, pg. 3). The Examiner admits, however, that BARANOWSKY, II et al. does not disclose a second terrestrial network or that the second terrestrial network is slower than the first terrestrial network and relies on KURESHY et al. for allegedly disclosing these features (final Office Action, pg. 3). Applicants strenuously object to the Examiner's piecemeal examination of this claim.

That is, instead of addressing the feature of logic to determine, when a first terrestrial network is unavailable, whether a second terrestrial network is available, the second terrestrial network being slower than the first terrestrial network (as recited in claim 1), the Examiner points to one reference for allegedly disclosing determining whether a second network is available and to a second reference for allegedly disclosing that the second network is a slower terrestrial network. Such attempts at reconstructing Applicants' claims are clearly impermissible.

Moreover, even assuming, for the sake of argument, that KURESHY et al. discloses first and second terrestrial networks, where the second terrestrial network is slower than the first terrestrial network (a point that Applicants do not concede), Applicants submit that one skilled in the art would not have been motivated to incorporate this alleged teaching of KURESHY et al. into the BARANOWSKY, II et al. system, absent impermissible hindsight.

With respect to motivation, the Examiner alleges:

> it would have been obvious ... to combine the teachings to arrive at the claimed invention. A motivation for doing so would have been to provide continuous transition as related to network access.

Applicants respectfully disagree.

BARANOWSKY, II et al. discloses a mobile telephone having the ability to hand off an ongoing call from a cellular network to a satellite network (see, for example, Abstract). Thus, the BARANOWSKY, II et al. system already provides continuous transition as related to network access. Applicants submit that BARANOWSKY, II et al. does not disclose or suggest a desire to include a second terrestrial network, which is slower than the cellular network (which the Examiner alleges corresponds to the recited first terrestrial network) disclosed in BARANOWSKY, II et al. Applicants submit that the Examiner's motivation for incorporating a second, slower terrestrial network into the BARANOWSKY, II et al. system is impermissibly gleaned from Applicants' own disclosure. The Examiner has not pointed to any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to incorporate KURESHY et al.'s alleged disclosure of first and second terrestrial networks, where the second terrestrial network is slower than the first terrestrial network, into the BARANOWSKY, II et al. system. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 1.

For at least the foregoing reasons, Applicants submit that claim 1 is patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination.

Claims 3, 6-9, 11, and 12 depend from claim 1. Therefore, these claims are patentable over BARANOWSKY, II et al. and KURESHY et al. for at least the reasons given above with respect to claim 1.[2] Moreover, these claims recite additional features not disclosed or suggested by BARANOWSKY, II et al. and KURESHY et al.

For example, claim 3 recites that the logic is further configured to determine, when the first terrestrial network is available, whether transmission of the data through the first terrestrial network was successful, and perform the determining whether the second terrestrial network is available when the transmission of the data through the first terrestrial network was unsuccessful. BARANOWSKY, II et al. and KURESHY et al. do not disclose or suggest this combination of features.

For example, BARANOWSKY, II et al. and KURESHY et al. do not disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful. With respect to this feature, the Examiner alleges "the control processor determines whether or not service is available. If MSAT service is available, data are received and transmitted through the first network" and points to Fig. 4; col. 10, lines 45-46, and col. 13, lines 15-21, of BARANOWSKY, II et al. for support (final Office Action, pp. 3-4). Applicants respectfully submit that the Examiner has misinterpreted the above feature of claim 3.

Claim 3 does not recite determining whether the first network is available. Instead, claim 3 specifically recites that the logic determines, when the first terrestrial

[2] As Applicants' remarks with respect to the base independent claims are sufficient to overcome the Examiner's rejections of all claims dependent therefrom, Applicants' silence as to the Examiner's assertions with respect to dependent claims is not a concession by Applicants to the Examiner's assertions as to these claims, and Applicants reserve the right to analyze and dispute such assertions in the future.

network is available, whether transmission of the data through the first network was successful. The Examiner does not point to any section of BARANOWSKY, II et al. or KURESHY et al. for disclosing this feature of claim 3.

Fig. 4 of BARANOWSKY, II et al. merely depicts the determination of whether the MSAT network and the cellular network are available. This figure in no way discloses or suggests determining whether the transmission of data through one of these networks was successful. Therefore, this figure of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by claim 3.

At col. 10, lines 45-46, BARANOWSKY, II et al. discloses that the control processor determines whether the MSAT network is available. This section of BARANOWSKY, II et al. in no way discloses or suggests that the control processor determines whether the transmission of data through the MSAT network is successful. Therefore, this section of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by claim 3.

At col. 13, lines 15-21, BARANOWSKY, II et al. discloses:

> Referring again to FIG. 4, if decision block 63 indicates that MSAT service is available, the re-registration timer is started at function block 90. If necessary, the cellular transmitter is disabled and the voice bus is switched to MSAT if not already in such a configuration. The MSAT phone calls then are made and received as needed as indicated by function block 92.

This section of BARANOWSKY, II et al. discloses determining whether the MSAT service is available. This section of BARANOWSKY, II et al. in no way discloses or suggests that the control processor determines whether the transmission of data through the MSAT network is available. Therefore, this section of BARANOWSKY, II et al. cannot disclose or suggest logic to determine, when the first terrestrial network is available, whether transmission of the data through the first network was successful, as required by claim 3.

For at least these additional reasons, Applicants submit that claim 3 is patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination.

Independent claims 13, 21, and 22 recite features similar to (yet possibly of different scope than) features described above with respect to claim 1. Therefore, Applicants submit that claims 13, 21, and 22 are patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 1.

Claims 14, 16, and 20 depend from claim 13. Therefore, these claims are patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 13.

Claims 26-30 depend from claim 22. Therefore, these claims are patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 22.

Moreover, these claims recite additional features not disclosed or suggested by BARANOWSKY, II et al. and KURESLY et al.

For example, claim 29 recites that the logic performs the selecting a network when data is to be transmitted from the device. The Examiner relies on col. 8, lines 55-59, of BARANOWSKY, II et al. for allegedly disclosing this feature (final Office Action, pg. 9). Applicants respectfully disagree with the Examiner's interpretation of BARANOWSKY, II et al.

At col. 8, lines 55-59, BARANOWSKY, II et al. discloses that the mode via which the mobile terminal operates is based on keypad entered information. This section of BARANOWSKY, II et al. in no way discloses or suggests that the mobile terminal performs the selecting a network when data is to be transmitted from the mobile terminal, as would be required by the Examiner's interpretation of claim 29.

For at least these additional reasons, Applicants submit that claim 29 is patentable over BARANOWSKY, II et al. and KURESHY et al., whether taken alone or in any reasonable combination.

Claims 2, 19, and 23 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD. Applicants respectfully traverse this rejection.

Claim 2 depends from claim 1. The disclosure of MENARD does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 1. Therefore, claim 2 is patentable over BARANOWSKY, II et al., KUERSHY et al., and MENARD, whether taken alone or in

any reasonable combination, for at least the reasons given above with respect to claim 1. Moreover, claim 2 is patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD for reasons of its own.

Claim 2 recites that the first terrestrial network comprises an IEEE 802.11-based network and the second terrestrial network comprises a ReFLEX-based network. The Examiner admits that BARANOWSKY, II et al. does not disclose this feature and relies on MENARD for allegedly disclosing this feature (final Office Action, pg. 9). While MENARD does appear to disclose an IEEE 802.11-based network and a ReFLEX-based network, Applicants submit that one skilled in the art at the time of Applicants' invention would not have been motivated to modify the operation of BARANOWSKY, II et al. to include these networks, absent impermissible hindsight.

With respect to motivation, the Examiner alleges

> it would have been obvious ... to have a device or method that may access an IEEE 802.11 network and a paging network in order to provide to the device the ability to switch between networks whenever factors, such as available service, signal strength, or types of communications being supported occur

(final Office Action, pg. 10). Applicants respectfully disagree.

Applicants submit that the Examiner's motivation falls short of explaining why one skilled in the art at the time of Applicants' invention would have been motivated to change the very operation of the BARANOWSKY, II et al. system, which is directed to allowing a mobile terminal to select between a satellite network and a cellular network, to further allow the mobile terminal to select between an IEEE 802.11-based network and a ReFLEX-based network. The Examiner's motivation is merely a conclusory statement

regarding an alleged benefit of the combination. Such motivation statements are insufficient for establishing a *prima facie* case of obviousness.

The Examiner further points to para. 0054 of MENARD for allegedly providing the motivation for combining MENARD with BARANOWSKY, II et al. and KURESHY et al. (final Office Action, pg. 10). At para. 0054, MENARD discloses:

> In one embodiment, the long-range wireless network includes a cellular communications network. In one embodiment, the long-range wireless network includes a paging network. In one embodiment the long-range wireless network includes a satellite network. In one embodiment the long-range wireless network includes a wideband or narrowband PCS network. In one embodiment the long-range wireless network includes a wideband or narrowband trunk radio module. Other networks are possible without departing from the present system. In one embodiment, the network module supports multiple network systems, such as a cellular module and a two-way paging module, for example. In such embodiments, the system may prefer one form of network communications over another and may switch depending on a variety of factors such as available service, signal strength, or types of communications being supported. For example, the cellular network may be used as a default and the paging network may take over once cellular service is either weak or otherwise unavailable. Other combinations are possible without departing from the present system.

This section of MENARD discloses that MENARD's system may prefer one form of network communications over another and may switch depending on a variety of factors, such as available service, signal strength, or types of communications being supported. This section of MENARD does not disclose or suggest why one skilled in the art at the time of Applicants' invention would have been motivated to change the very operation of the BARANOWSKY, II et al. system, which is directed to allowing a mobile terminal to select between a satellite network and a cellular network, to further allow the mobile terminal to select between an IEEE 802.11-based network and a ReFLEX-based network.

Applicants' submit that the Examiner's motivation is merely a conclusory statement regarding an alleged benefit of the combination. Such motivation statements are insufficient for establishing a *prima facie* case of obviousness.

For at least these additional reasons, Applicants submit that claim 2 is patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD, whether taken alone or in any reasonable combination.

Claim 19 depends from claim 13. The disclosure of MENARD does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 13. Therefore, claim 19 is patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 13. Moreover, claim 19 recites a feature similar to (yet possibly of different scope than) a feature described above with respect to claim 2. Therefore, Applicants submit that claim 19 is further patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 2.

Claim 23 depends from claim 22. The disclosure of MENARD does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 22. Therefore, claim 23 is patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 22.

Moreover, this claim is patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD for reasons of its own.

For example, claim 23 recites a feature similar to (yet possibly of different scope than) a feature described above with respect to claim 2. Therefore, Applicants submit that claim 23 is further patentable over BARANOWSKY, II et al., KURESHY et al., and MENARD, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 2.

Claims 4, 5, 10, and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of GRIFFITH et al. Applicants respectfully traverse this rejection.

Claims 4, 5, and 10 depend from claim 1. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 1. Therefore, Applicants submit that claims 4, 5, and 10 are patentable over BARANOWSKY, II et al., KURESHY et al., and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 1.

Claim 15 depends from claim 13. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 13. Therefore, Applicants submit that claim 15 is patentable over BARANOWSKY, II et al., KURESHY et al., and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 13.

Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of GUNNARSSON et al. Applicants respectfully traverse this rejection.

Claims 17 and 18 depend from claim 16. The disclosure of GUNNARSSON et al. does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al. and KURESHY et al. set forth above with respect to claim 16. Therefore, Applicants submit that claims 17 and 18 are patentable over BARANOWSKY, II et al., KURESHY et al., and GUNNARSSON et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 16.

Claim 24 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD and BRIDGELALL. Applicants respectfully traverse this rejection.

Claim 24 depends from claim 23. The disclosure of BRIDGELALL does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al., KURESHY et al., and MENARD set forth above with respect to claim 23. Therefore, Applicants submit that claim 24 is patentable over BARANOWSKY, II et al., KURESHY et al., MENARD, and BRIDGELALL, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 23. Moreover, this claim is patentable over BARANOWSKY, II et al., KURESHY et al., MENARD, and BRIDGELALL for reasons of its own.

Claim 24 recites logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available. The

Examiner admits that BARANOWSKY, II et al., KURESHY et al., and MENARD do not disclose this feature (final Office Action, pg. 11). The Examiner relies on para. 0027 of BRIDGELALL for allegedly disclosing this feature (final Office Action, pg. 11). Applicants respectfully disagree with the Examiner's interpretation of BRIDGELALL.

At para. 0027, BRIDGELALL discloses:

> When more than one network is available, either push based location services or a pull based location service may be desired. For example, even though WWAN coverage with good signal strength may be available in a mall, WLAN network access with equally good or slightly worse signal quality may still be preferred because of the higher speed access and additional in-commerce space services within the mall. A roaming algorithm takes into account that the user is in the mall (or university campus) and switches over to the WLAN (even though the signal quality is not necessarily any better).

This section of BRIDGELALL discloses that a WLAN network connection may be chosen over a WWAN network connection when both are available. This section of BRIDGELALL does not disclose or suggest a ReFLEX-based network. In fact, BRIDGELALL does not even mention a ReFLEX-based network. Therefore, neither this section nor any other section of BRIDGELALL can disclose or suggest logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available, as required by claim 24.

Moreover, even assuming, for the sake of argument, that BRIDGELLAL can reasonably be construed as disclosing logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available (a point that Applicants do not concede), Applicants submit that one skilled in the art would not have been motivated to incorporate this alleged teaching of

BRIDGELALL into the BARANOWSKY, II et al. system, absent impermissible hindsight.

With respect to motivation, the Examiner alleges:

> it would have been obvious ... to combine the teachings to arrive at the claimed invention. A motivation for doing so would have been to provide continuous transition as related to network access.

Applicants respectfully disagree.

BARANOWSKY, II et al. discloses a mobile telephone having the ability to hand off an ongoing call from a cellular network to a satellite network (see, for example, Abstract). Thus, the BARANOWSKY, II et al. system already provides continuous transition as related to network access. Applicants submit that the Examiner's motivation for incorporating logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available into the BARANOWSKY, II et al. system is impermissibly gleaned from Applicants' own disclosure. The Examiner has not pointed to any suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to incorporate BRIDGELALL.'s alleged disclosure of logic configured to select the IEEE 802.11-based network to transmit data over the ReFLEX-based network when both networks are available into the BARANOWSKY, II et al. system. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 24.

For at least these additional reasons, Applicants submit that claim 24 is patentable over BARANOWSKY, II et al., KURESHY et al., MENARD, and BRIDGELALL, whether taken alone or in any reasonable combination.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over BARANOWSKY, II et al. in view of KURESHY et al., and further in view of MENARD and GRIFFITH et al. Applicants respectfully traverse this rejection.

Claim 25 depends from claim 23. The disclosure of GRIFFITH et al. does not remedy the deficiencies in the disclosures of BARANOWSKY, II et al., KURESHY et al., and MENARD set forth above with respect to claim 23. Therefore, Applicants submit that claim 25 is patentable over BARANOWSKY, II et al.,, KURESHY et al., MENARD, and GRIFFITH et al., whether taken alone or in any reasonable combination, for at least the reasons given above with respect to claim 23.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY SNYDER, L.L.P.

By: /John E. Harrity/
John E. Harrity
Registration No. 43,367

Date: September 27, 2006

11350 Random Hills Road
Suite 600
Fairfax, Virginia 22030
(571) 432-0800

Customer Number: 25537